RYANAIR

Ryanair Dublin Office
Airside Business Park
Swords
County Dublin
Ireland
Telephone: +353 1 945 1212
Website: www.ryanair.com

14 March 2022

Commission for Aviation Regulation
3rd Floor
6 Earlsfort Terrace
Dublin 2
Email: info@aviationreg.ie

By email

Re: CP1/2022 – Issues Paper for Third Interim Review of the 2019 Determination on Airport Charges at Dublin Airport for the period 2023 to 2026

Dear Sir/Madam,

Please find below Ryanair's response to CP1/2022.

Introduction

At the outset, Ryanair reiterates the view it expressed in response to CAR's first Interim Review of the 2019 Determination (CP3/2020) that it would be wholly inappropriate and irrational for any review of the Determination to result in increased charges to users during the recovery phase from the pandemic, which is likely to be ongoing through most if not all of the proposed four year regulatory period of 2023-2026.

Hence, our view, as expressed in 2020, applies as much today as it did then. We made clear in 2020 that we did not support the use of a 'building blocks' approach for any Interim Review in the current pandemic circumstances as a wrong-headed application of the model will lead to pressure placed by DAA on CAR to increase the price cap at a time when traffic recovery is fragile. We refer CAR to previous responses to CP3/2020, CP9/2020, CP1/2021 and CP2/2021 where we laid out our fundamental position that there should be no review of the 2019 Determination at this time until the recovery path from the pandemic is clear, and that, if any such review were to be conducted, it should be based on the principles of competitive market pricing to stimulate recovery and not using a building blocks approach. Our view is consistent with the recent February 2022 recommendations of the Thessaloniki Forum in its paper on 'Airport charges in times of crisis' at paras 4.12 and 4.20 in relation to the need for airports' Covid-19 responses to ensure competitive outcomes and prioritise traffic restoration. Clearly, lower charges are needed to stimulate traffic in this fragile recovery period. Higher charges will disincentivise air travel from Dublin airport, leading to slower recovery and detriment to all stakeholders.

We do not agree with CAR's position, as set out at para 2.17 of CP1/2022, that continuing with the existing Determination would run contrary to CAR's Statutory Objectives, whether they are the existing objectives under section 33 of the Aviation Regulation Act, 2001 (the Act) or the amended Statutory Objectives under the Air Navigation and Transport Bill 2020 (the Bill). On the assumption that any CAR Decision following from this Issues Paper is taken under the amended Statutory Objectives as per the Bill (which we note is CAR's working assumption), our view is that the increased emphasis in CAR's Statutory Objectives on the requirements of users, and in light of the pandemic, means that there is a clear need for the objectives as applied by CAR in 2019 to be rebalanced in favour of user interests.

Board of Directors: Roisin Brennan, Michael Cawley, Emer Daly, Geoff Doherty, Stan McCarthy – Chairman,
Howard Millar, Dick Milliken (UK), Michael O'Brien, Michael O'Leary, Julie O'Neill, Louise Phelan
Registered Office: Ryanair Dublin Office, Airside Business Park, Swords, County Dublin, Ireland
Company No. 104547 | VAT No. 4749148U | Designated Activity Company

Even if CAR's Decision is taken under its existing Statutory Objectives (i.e., if the Bill has not passed into law by the time CAR makes its Decision), we believe that CAR's proposed approach in the Issues Paper is inconsistent with a proper balancing of its Statutory Objectives. CAR can meet its objective *"to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner"* while also meeting its other Statutory Objectives under section 33 of the Act. Instead, what CAR sets out as its proposed approach in CP1/2022 is solely designed to protect DAA from the effects of the pandemic and any future risks at the expense of the users of Dublin Airport. This is inconsistent with normal regulatory practice whereby the demand side risks are held by the shareholders of an entity; a fundamental responsibility acknowledged in the above-referenced February 2022 paper from the Thessaloniki Forum. To adopt any other approach would constitute a wholly unfair transfer of the risks in the circumstances where the users are themselves subject to an equivalent level of risk that they themselves are no better able to control than DAA. This breaches the fundamental principle that risk should be allocated to the entity best able to control that risk. The airlines are unable to control demand side risks, such as the effects of a pandemic or a major economic shock, any more than DAA, and the airlines using Dublin airport do not have a State shareholder sitting behind them to cushion the impacts of any such shock.

As CAR accepts, at para. 4.8 of CP1/2022, the effect of the two completed Interim Reviews has already transferred a part of the risks associated with the pandemic from DAA to its users. At paras. 2.9-2.10, CAR places a value on this transfer as €208 - €223 million. This is wholly unacceptable as a starting point, and it is staggering that CAR is considering any further transfer of risk onto users before redressing the risk already transferred through downward adjustments to the price cap for the coming years so as to reimburse users for the excess costs they have already paid. As CAR acknowledges in para. 2.8, these amounted to €2.24 per passenger in 2020, equivalent to a 32.5% increase in price, and will amount to €1.59 per passenger in 2022, equivalent to a 24.4% increase in price, over what should have been charged had the original 2019 Determination remained fully in force. This is wholly unacceptable during a time of crisis, leaving aside the future transfer of value to DAA through effective adjustments to the RAB.

Statutory Objectives and Remit

The purpose of economic regulation is to ensure that an airport with market power, as is clearly the case at Dublin Airport, acts in a manner consistent with an airport operating competitively. Airports operating competitively are not generally seeking to increase charges to cover the costs of Covid but are incentivising growth through reduced charges and incentive schemes. Examples of airports or airport groups freezing or reducing charges to encourage recovery include:

- Spain: Airport charges cannot increase during new regulatory period DORA II (2022-2026), this was done in agreement with Spanish government and regulator, CNMC. For the first year of this regulatory period, the model has meant that published charges in all AENA airports are reducing by -3.17% (v. 2021) starting 1 May 22 (including Madrid & Barcelona-El Prat).
- Many key airports are continuing charge freezes for 2022 in response to the pandemic to allow further recover, including Swedavia Group Airports (Stockholm-Arlanda & Gothenburg), Rome-Fiumicino & Athens.

- Airports, such as Sofia, are introducing published incentive schemes which reward traffic recovery through charges discounts.

CAR expects that its Decision following this Issues Paper will be taken after the Bill passes into law, amending its existing Statutory Objectives under section 33 of the Act. In previous Determinations, CAR has been required to balance three Statutory Objectives, including *"to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner"*. The revisions proposed in the Bill will remove this Statutory Objective whilst promoting *"to protect and promote the reasonable interests of current and prospective users of Dublin Airport"* to the principal objective. Other objectives, including the requirements relating to the efficient and economic operation of the airport and the promotion of high-quality and cost-effective services are relegated to second order objectives, which CAR is not obliged to deliver but must simply seek to deliver if possible, but clearly not at the expense of its primary objective. This change must have profound implications for the balancing that CAR must carry out in reaching a Decision. As this Bill is expected to become law by the time any new Interim Decision is finalised, CAR's preparatory work should be geared towards prioritisation of the new principal objective, not prioritisation of those applicable to past Determinations.

However, we understand a degree of uncertainty remains at this point as to when the Bill will pass into law. While CAR's view may be that any Decision pursuant to this Issues Paper needs to satisfy the existing Statutory Objectives in section 33 of the Act, and that its preparatory work should also envisage a scenario where the Decision is taken before the Bill passes into law, in our view, the proposed approach in the Issues Paper is imbalanced. CAR's proposed approach goes far beyond what is necessary to satisfy the objective *"to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner"*, even if it remained in place, at the expense of CAR's other Statutory Objectives. We are preparing a paper setting out our position on CAR's Statutory Objectives in light of the changed circumstances caused by the COVID-19 pandemic and will submit this to CAR shortly. The paper will cover the scenario whereby CAR's existing Statutory Objectives under the Act are applicable to CAR's Decision, and the scenario whereby CAR's Statutory Objectives have been amended by the Bill prior to CAR making its Decision pursuant to this Issues Paper.

Q. *We welcome views from stakeholders on our thinking in relation to the revised objectives, and what implications these changes should or should not have for our approach?*

As noted above, the working assumption of CAR appears to be that the Bill will revise its Statutory Objectives under the Act before CAR takes its Decision pursuant to this Issues Paper. However, some uncertainty exists as to when the Bill will pass into law.

On the assumption that the Bill will pass into law by the time CAR makes its Decision, CAR appears to be in denial that this change in its Statutory Objectives requires a change in approach to regulation. At para. 1.5, CAR states that the core of its objectives is to achieve *"economic efficiency and seeking to maximise the value that Dublin Airport provides to current and future users"*. However, the Bill sets out explicitly the change requiring the primacy of user interests over other objectives, including the addition of safety and security as an elevated consideration, as noted by CAR at para. 3.12. It is notable that the Bill explicitly removes the objective *"to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner"*. The Bill is explicit on the

changes proposed and it is not for CAR to infer that deleted objectives remain "implicit" in its decision making, as it seeks to do at para. 3.13. Removal of the objective to ensure the financial viability of DAA is clear and should not take primacy over the interests of users in which are clearly focused on lower costs, particularly at a time of recovery from a global crisis.

At para. 3.11, CAR seeks to construe the ongoing requirement to seek to facilitate the efficient and economic development and operation of Dublin Airport, along with the elevation of the requirement to seek high-quality and cost-effective airport services from a matter to which it should have due regard, as meaning that that its objectives have not really changed. However, previously, the objective in relation to the efficient and economic operation and development of Dublin Airport was given equal weight to the objective to promote the reasonable interest of users, whereas the change to s.33 of the Act will require any consideration of the airport's development to be tested principally against the primary objective of the promotion of users' interests.

Furthermore, we would seriously question whether CAR's proposed approach in this Issues Paper is aimed at securing *"economic efficiency and seeking to maximise the value that Dublin Airport provides to current and future users"* (para. 1.5), given the focus throughout CP1/2022 on the financial viability of DAA and its ability to deliver development, regardless of whether such development is required by users at this time.

At para 3.12, CAR goes on to state that the requirement to be introduced by the Bill to take account of aviation policy and to have due regard to the encouragement of competition and improved connectivity is best met through *"efficient Airport Charges which are sufficient to enable the delivery of the required capacity and the provision of an appropriate level of service quality"*. In our view, these objectives/due regard factors will clearly best be achieved by ensuring that the charges at Dublin Airport are set at a level that makes it attractive for airlines to increase services and take the risk of starting services to new destinations. The stimulus effect on connectivity is clearly exemplified by Ryanair's recent expansion incentivised by the Government's airport charges incentive scheme to encourage recovery from the effects of the pandemic.

In this context, it is important to ensure that the development of capacity is not seen as an objective in itself, as has incorrectly been the tendency in the past, but as secondary to the principal objective of promoting users' interests, which is best achieved through ensuring that charges are kept as low as possible to promote competition and improvements in connectivity. Greater weight should be applied to ensuring efficiency rather than development per se, particularly where this involves the provision of new capacity ahead of when it is needed.

Whilst the financial viability of Dublin Airport is a consideration for CAR, the deletion of the specific requirement *"to enable Dublin Airport Authority to operate and develop Dublin Airport in a sustainable and financially viable manner"* does have implications for the weight that CAR should place on financeability and any adjustments as we discuss further later in this submission. In our view, the provisions relating to the financial viability of DAA will sit within CAR's *"due regard"* factors in section 33(2) of the Act, when amended by the Bill, therefore they will be subsidiary to CAR's principal Statutory Objective to protect the interests of users. In any event, the prospects of DAA experiencing financial viability issues or having difficulty raising debt are extremely low as we explain later in this response.

Overall, it is clear to Ryanair that the requirements of the Bill, when coupled with the objective to encourage growth in international air connectivity to Ireland, require a robust response that seeks to keep charges at Dublin Airport at a competitive level and as low as possible so as to promote growth and recovery. CAR explicitly acknowledges the impact of lower airport charges in stimulating recovery at paras. 2.14 and 5.36 when it refers to the significant impact of the Government's stimulus package of traffic incentive schemes which has led directly to Ryanair planning its largest ever programme from Dublin Airport in summer 2022.

In the event that the Bill does not pass into law, and as noted above, the proposed approach in the Issues Paper is imbalanced and goes far beyond what is necessary to satisfy the objective *"to enable daa to operate and develop Dublin Airport in a sustainable and financially viable manner"* and at the expense of CAR's other existing Statutory Objectives. As noted above, we are preparing a paper setting out our position on CAR's Statutory Objectives (existing and amended) in light of the changed circumstances caused by the COVID-19 pandemic, and the impact on the approach to regulation signposted in this Issues Paper, and will submit this to CAR shortly.

Approach to Regulation

As we have made clear above, we have consistently stated that the use of a 'building blocks' approach is unsuitable during the period of recovering traffic from the effects of the pandemic. Given the relatively high proportion of fixed costs inherent in the operation of any airport, it is almost inevitable that the wrong-headed and simplistic adoption of a 'building blocks' approach will result in pressure by DAA on CAR to increase prices to airport users at a time when they can least afford them, and when demand still needs stimulation through lower fares. This view was echoed in responses from other users[1] to CAR's earlier consultations on Interim Reviews of the current Determination. Despite this clear message from users, CAR has pre-empted the current consultation by stating that it does not intend to change the overall building blocks approach (para. 4.6). This cavalier dismissal of the views of users is unacceptable, particularly in the context of the assumed change to the Statutory Objectives which CAR must satisfy. 2022 is simply premature for a full 'building blocks' based review.

CAR outlines how it has addressed the first three years of the current quinquennium in the adjustments it has made to the 2019 Determination. We consider that the interventions made by CAR have effectively removed the incentive on DAA to act as a competitive airport, as CAR has cushioned DAA from the impact of the pandemic, in a way that would not have been possible had the Airport not been regulated, through the transfer of risk to the tune of €208 - €223 million from DAA to users. As noted, above, this has had a direct and immediate impact on the prices that users have paid and would pay in 2022 were it not for direct Government intervention by way of support for traffic incentives. We consider the transfer of risk that has already taken place to be unacceptable and that such a transfer was not required to ensure the financial sustainability of Dublin Airport for the reasons we will elaborate on below. Indeed, the adjustments made appear to fall foul of the principles as set out by the Thessaloniki Forum in its February 2022 'Airport charges in times of crisis' paper (para. 4.13) as constituting an adjustment to the price cap formula that was not required to secure the long-term financial sustainability of the Airport, as CAR itself made clear at para. 5.29 of CP3/2021.

[1] Aer Lingus and British Airways responses to CP2/21.

To that end, contrary to what CAR says at para. 4.10, there should be no expectation of further loss recovery mechanisms being invoked. Rather, users should be reimbursed for the unnecessary costs that they have already incurred due to the adjustments that CAR made in the previous Interim Reviews.

A further area of concern is that the adoption of a simplistic approach to regulation will embed the principle of an annual CPI adjustment to the actual charges. At the current time of global uncertainty and higher inflation rates, this could potentially lead to annual price cap increases in excess of 5%, which would simply be inappropriate when the priority should be on recovery.

Risk Sharing

At para. 1.8 of CP1/2022, CAR acknowledges that the current regulatory structure, as applied in 2019 and earlier Determinations, means that, whilst DAA has retained the downside risk within the quinquennium (excepting CAR's recent interventions to protect DAA during the pandemic), any risk is transferred to users at the start of the next quinquennium. DAA also retains the upside within a quinquennium, and this is not returned to users particularly where rolling incentives are applied, although the risk is transferred when the opex and commercial revenues are reset at the start of each quinquennium. In terms of the regulatory mechanism, this treatment of risk and upside is at least theoretically symmetrical leaving aside rolling incentives, so long as the regulatory parameters have been correctly set in the first place to ensure the appropriate incentives are in place.

CAR now proposes to deviate from this approach in proposing a specific risk sharing mechanism where the risk of downsides, favouring only the Airport, exceeds the potential for upsides from which users would benefit. Again, this appears to breach the principle of symmetry as laid out by the Thessaloniki Forum in its 'Airport charges in times of crisis' February 2022 paper (para. 4.14). CAR's position is also at odds with the assumed revised Statutory Objectives as per the Bill, which will make DAA's financial position subsidiary to users' interests.

It is a fundamental principle of any risk sharing mechanism that risk should be allocated to the entity best able to control that risk. It is an important fact that the airlines are no more able to control demand side risks, such as the effects of a pandemic or a major economic shock, than DAA, and do not have a State shareholder sitting behind them to cushion economic shocks. Any shortfall in traffic, such as caused by a pandemic or other economic shock, also hits airlines in terms of revenues earned to cover their fixed costs, such as aircraft assets, but they cannot pass these risks onto consumers at a time of falling demand and uncertain recovery. A risk sharing mechanism could also be triggered by one airline failing, leading to the remaining airlines being penalised unfairly. Under the existing regulatory principles, the risks should be effectively shared with the Airport and its users each bearing their own share of the risks. The fact DAA has a State shareholder willing and able to bail it out must be factored into this risk allocation. CAR has already negatively intervened to distort the balance in its two previous Interim Reviews and this needs to be redressed.

Q. We seek stakeholder views on if, and how, we should equip this decision to deal with a reasonable range of likely outcomes, and secondly, how the possibility of an extreme downside should be approached?

CAR appears to start from the principle that its primary purpose is to *"enable Dublin Airport to chart a path through the likely uncertainty in the years ahead"*. This focus on the ability of the Airport to chart a course seems to be at odds with the principal objective to which CAR must adhere *"to protect and promote the reasonable interests of current and prospective users of Dublin Airport"*. Its focus must, therefore, be on how it may best foster the interests of users.

CAR is framing the debate based on the presumption that regulation has to allow for the regular recurrence of what is acknowledged to have been an unprecedented event. This seems to be treating a once in 100 years event as if it was likely to occur regularly. This is not an appropriate approach for a regulatory regime. Hence, we do not consider that CAR's decision can or should attempt to accommodate such unprecedented events. The most appropriate approach to such rare events is for CAR to take a bespoke approach to the individual circumstances at the time, i.e., through a tailored interim review. This should not be read as Ryanair accepting that CAR's interim review responses through 2020 and 2021 have been appropriate. Nonetheless, Ryanair agrees with CAR, at para. 4.15, that an automatic provision built into the regulatory settlement to deal with an extreme scenario such as another global pandemic would be neither reasonable or workable.

If CAR accepts that provision for such extreme events within the regulatory regime is not workable, we would question why it is considering risk sharing at all for events that lie within the 'normal' range of variation. This creates a real jeopardy that airlines would be penalised for a 'normal' risk event and then see CAR re-open a determination to deal with a more extreme event which would conflate the risk to the detriment of users. Ryanair does not consider that a risk sharing mechanism is warranted nor consistent with CAR's Statutory Objectives (existing or revised).

Q. We are currently open minded on the approach to risk allocation for 2023-2026. We are keen to receive the views of stakeholders on their preferred approach of those listed above. Stakeholders may wish to respond either by stating or ranking their preferred approach(es), or else by ranking their priorities among the criteria set out above; for example, de-risking the regulated entity as compared to maintaining stronger efficiency incentives?

CAR proposes four possible approaches to risk allocation:

a. Retain the current approach, with refinement of opex passthroughs and construction price inflation;
b. Traffic Risk Sharing (TRS);
c. General Risk Sharing (GRS);
d. Capex flexibility based on forecast traffic levels.

CAR appears to start from the presumption that a risk sharing mechanism is desirable. It is clear that CAR sees the primary purpose of a risk sharing mechanism is to *"de-risk the regulated entity"*. Nowhere in the list of considerations at para. 4.21 does CAR consider the effect on users – the primary objective it must satisfy in terms of the regulation of Dublin Airport as per the Bill, and one of the existing Statutory Objectives under s.33 of the Act. We consider this wholly unacceptable and reject CAR's proposals.

Whilst the UK Civil Aviation Authority is currently contemplating a Traffic Risk Sharing mechanism for Heathrow for H7, this has not been accepted by the airlines (AOC/LACC response to CAP2265). In any event, Heathrow is not a relevant comparator for Dublin

Airport as, prior to the pandemic, it was operating at virtually 100% capacity meaning that, any risk sharing provisions would only be invoked in very exceptional circumstances given the high and persistent levels of excess demand at all times of the day and year. Even in these circumstances, the airlines at Heathrow have questioned the motivation for risk sharing and made clear that, at the very least, risk sharing should as a minimum achieve:

a. A substantial, transparent and evidence-based reduction in the WACC leading to lower charges;
b. Be based on an understanding of efficient opex and commercial revenues across a range of scenarios;
c. No weakening of the incentives for achieving efficiencies and growth;
d. Should protect the single till and ensure that charges to airlines do not rise as traffic falls.

The airlines have stressed that unless a mechanism can be demonstrated to achieve all of these outcomes, it would not be acceptable. Most importantly, there should be evidence that the transfer of risk results in user benefits through the lowering of the Airport's cost of capital in such a way as to lead to lower charges and consumer benefits in normal times. At present, we are not aware of any evidence that traffic risk sharing mechanisms at other airports have clearly led to a lowering of the airport's WACC and, therefore, to lower charges. Absent such evidence, risk sharing should not be contemplated.

TRS and GRS

There is a real jeopardy that any risk sharing mechanism could lead to substantial increases in costs to users, even if deferred to a following quinquennium and applied as an adjustment to the RAB (CAR's option 3 at para 4.31). Dependent on the severity of the event, the increase in the RAB could be significant – had such a mechanism been in force at Dublin Airport through the pandemic, it could have resulted in a RAB increase of €600 million or more for which users would be paying for many years to come and with no effective benefit. The position would be materially worse with a GRS mechanism than a TRS mechanism. It is of little comfort that CAR suggests (para. 4.27) that the mechanism might be symmetric.

Mechanisms that see a quicker increase in charges during a downturn in traffic would be even less acceptable, albeit an early return of upsides would be beneficial if the mechanism was truly symmetric. Again, the likelihood of downside outcome from a risk sharing mechanism means that the negative impacts are likely to outweigh any benefits, so long as the price cap has been appropriately set in the first place. Hence, mechanisms that see early pass through of risks must be summarily dismissed. The fact that these would be seen as most favourable to the Airport's funders (para. 4.33) is an irrelevant consideration unless the positive impact on the reduction of the WACC is clearly evident.

At para. 4.28, CAR discusses the importance of understanding the extent to which opex and commercial revenues would vary with shortfalls in traffic as a means of calibrating any proposed risk sharing, particularly in terms of the banding of any mechanism. We would add another important criterion, namely the agreement of the airlines (who would be asked to bear the risk under any risk sharing mechanism) to all of the input assumptions in order to prevent DAA (from distorting the future projections upon which the Determination is based so as to increase the likelihood of a risk share being invoked). The importance of user agreement to all of the building blocks and projections is a key principle of the approach recommended by the Thessaloniki Forum (para. 5.9 of the February 2022 Paper). Asking the

airlines to accept the risk of deviation from the regulatory settlement requires much stronger mechanisms than are currently in place to ensure that the airlines sign off on the assumptions against which they would be required to accept the risk. This would apply whether a TRS or GRS mechanism is proposed, but would be even more important in the latter case.

Capex Adjustment Mechanism

CAR's Option d (capex adjustment mechanism) would be of little comfort to users if it is limited to the clawback of unspent capex (para 4.38). Such a mechanism would effectively provide an incentive to DAA to commit to capex, even if a traffic shortfall was evident, to prevent such a clawback. This is exactly what CAR has stated that it sought to avoid in its two recent Interim Reviews, even where it was clear that the capex was not being committed.

In the event of an upside, it should not be automatic that DAA can invest a portion of the additional income in capex rather than have it returned to users as this could simply incentivise investment in projects that are not required. Instead, should these circumstances arise, it would be preferable to adopt the approach taken to the PACE projects, whereby users were consulted on whether they would support the additional investment proposed. Investment should not be seen as an end in itself, as CAR appears to do at para. 4.39, but should be demonstrably something that users want and are willing to pay for. CAR appears to be adopting a general presumption that user interests are best served by securing investment rather than lowering prices. This is not correct.

Ultimately, all of these risk sharing mechanisms are effectively a move away from an incentive-based form of regulation, designed to encourage the regulated entity to behave in a more competitive fashion, towards a form of revenue guarantee. This is not acceptable and is a prioritisation of DAA's financial position over users' interests, which is not permissible under either the current regulatory regime or the regime which will be in place following the Bill's passing into law. We agree with CAR (para. 4.44) that there is a real threat that any risk sharing mechanism could dilute the incentive on DAA to reduce costs or maximise commercial revenues should another downside shock occur. As CAR notes, at para. 4.45, this would move Dublin Airport further away from the incentive to reduce costs that would be faced by an airport operating within a competitive environment, effectively reinforcing its market power. This alone is sufficient grounds for rejecting a risk sharing mechanism.

Q. We welcome views from stakeholders on the [above] topics and, in particular, how we should prioritise these outcomes where we observe a trade-off?

In relation to trade-offs, we recognise the importance of CAR's Decision being internally consistent in terms of the assumptions underpinning the building blocks.

CAR's principal concern appears to be the relationship between the requirement for a large amount of capex and the need for a financial viability adjustment. We address these matters later in this response. At the outset, it is important to state that if capacity investment is intended to respond to passenger growth then this should be reflected in the use of positive triggers, i.e., capex should not be allowed until specified conditions have been reached. This is the converse of the approach adopted by CAR in the 2019 Determination. If there is a downturn, the first reaction should be to slow capex, which is what CAR singularly failed to do in the two Interim Decisions in 2020 and 2021 by allowing DAA to maintain the benefit of the unspent capital allowances. The purpose of slowing capex investment should be to

reduce the cost base and allow charges to be proportionately reduced through a time of suppressed demand.

Passenger Forecasts

Q. What methodology and data sources should we use to forecast passenger numbers?

Q. We welcome all opinions and feedback on potential forecast methodologies, factors to consider, and appropriate causal drivers. We also remain open to considering alternative options that we may have overlooked in this overview. The Passenger Forecast building block will be particularly challenging, and as such, we are very open to considering different approaches?

Ryanair has, in numerous submissions over the years, stressed that the passenger forecasts underpinning CAR's Determinations need to take account of the price of air travel as well as simply GDP. There is strong evidence that there is an adverse impact on passenger demand when costs rise. Similarly demand rises as prices fall. This is particularly material in the context where CAR is proposing to adopt a building blocks approach to the forthcoming Decision, likely to lead to pressure by DAA on CAR to increase the price cap, and also contemplates a risk sharing mechanism that would have the effect of further increasing airport charges if another shock event were to occur, which could apply to relatively small deviations from forecasts beyond a 'deadband' and give rise to a further downward spiral leading to further upward pressure on charges.

Examining the past passenger growth at Dublin Airport as shown in the chart below, it is evident that, whilst there was a strong relationship to GVA (GDP) over the period from 2015-2019, during a period when the price cap fell in real terms, the relationship was not strong in earlier years (in the second chart below), when the airport charges were rising and an air travel tax was in force.

Chart 1: Relationship between Passenger Throughput and GVA at Dublin Airport 2006-2019

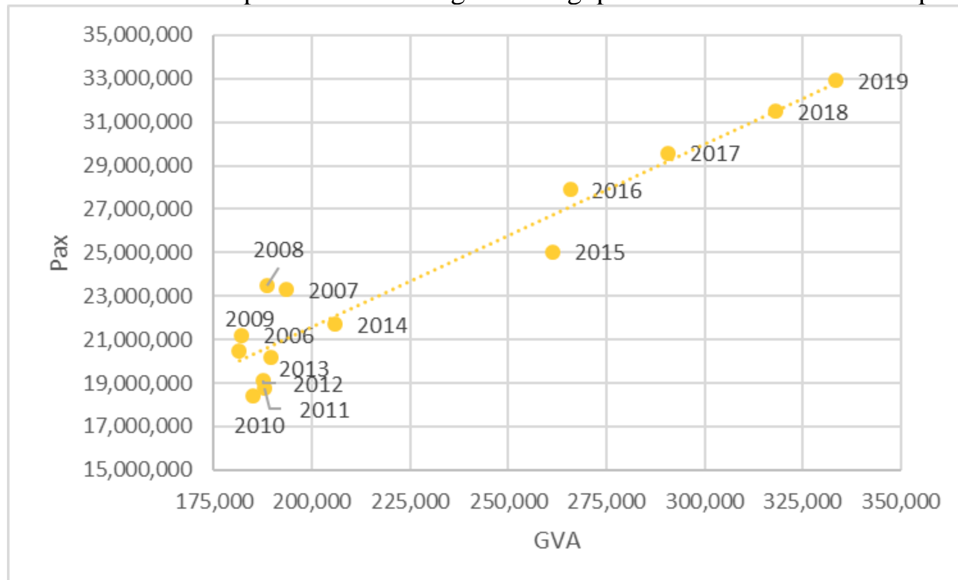
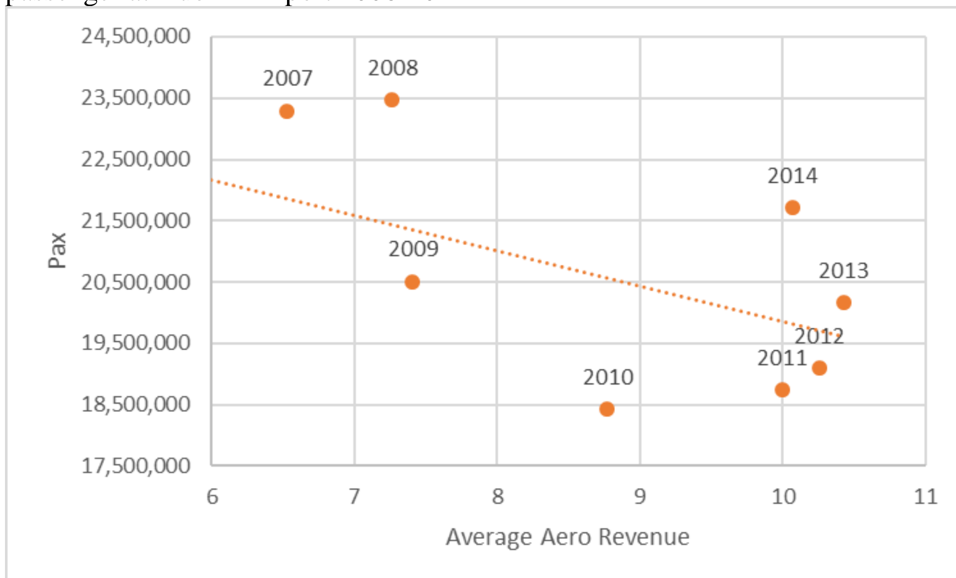


Chart 2: Relationship between Passenger Throughput and GVA at Dublin Airport 2006-2014

It is clear that other factors were at play in this earlier period, principally factors affecting the cost of travel. For this earlier period, passenger volumes were higher when airport charges (DAA's average aeronautical yield) were lower as shown in the chart below, but the relationship was impacted by the effect of the global financial crisis as well.

Chart 3: Relationship between Passenger Throughput and Average Aeronautical Revenue per passenger at Dublin Airport 2006-2014



CAR itself acknowledges that price can impact on demand when, at para. 2.14, it cites the effect of the Government's €97m subsidy to Dublin Airport to enable them to reduce charges to airlines so as to incentivise recovery. DAA is offering discounts against regulated charges in the range of 50-100%. The increase in our Dublin Airport schedule for S22 is hardly surprising in this light but the beneficial effects of these discounts could be undermined should CAR propose an increase in the price cap for 2023-2026.

Combining GVA, taxes, and airport charges produces the most robust relationship with an R^2 of 0.99. The reason that this matters is that it clearly demonstrates the potential for CAR's pricing decisions to impact on passenger volumes, and create jeopardy for airlines and

passengers in terms of the risk of higher prices (compounded through the prospective application of risk sharing mechanisms). In the context where the considerations to which CAR must have regard have been extended to include enhancing connectivity and competition, this outcome would run contrary to the Government's intent. Hence CAR must take into account the effect of its pricing decisions in finalising its forecasting.

In terms of the baseline for the forecasts, most airport forecasters are working from a 2019 baseline and looking at relative change. It would be expected that air travel demand would return to a 'normal' response to economic and cost factors in the medium term (mid 2020s).

In practice, it may be expected that Dublin Airport would see recovery, particularly in core short haul markets, earlier than other airports if the costs of using the Airport are appropriate. This is evidenced by the increased Ryanair programme at the Airport for summer 2022, incentivised by reduced airport charges due to Government support. The Airport is fortunate in having two strong based airlines that account for a substantial proportion of its overall traffic. Ryanair is prepared to share its internal forecasts for Dublin airport with CAR on a confidential basis during the course of CAR's process leading to a Decision on the price cap for 2023-26.

To the extent that short-term uncertainties remain, this would be a powerful reason why a building blocks review is inappropriate at this time as short-term forecasts could remain highly uncertain whilst the risk of travel restrictions and potential new variants remains. Nonetheless, beyond these factors, we would expect growth at Dublin Airport to be higher than elsewhere so long as the price for using the Airport is set at a competitive level. Hence, setting the building blocks now, in 2022, is problematic but, in the medium term, strong growth would be expected so long as an appropriate regulatory approach is adopted that stimulates growth in connectivity and competition, as required of CAR under the terms of the Bill.

The high levels of uncertainty and the potential jeopardy for users means that it is imperative that users sign off on the forecasts before they are used in any Determination. This is in line with the recommendations of the Thessaloniki Forum (February 2022 Paper, para. 5.9). However, uncertainty is a principal reason why the building blocks approach is not appropriate at this time and the concerns would not be resolved by a risk sharing approach which would tend to favour the Airport should restrictions return and recovery be delayed for reasons outside of anyone's direct control.

Opex

Q. What is an appropriate baseline to use for the revised Opex forecast?

Q. How should Opex evolve from this baseline over the regulatory period?

Q. We welcome all feedback from stakeholders in relation to what the primary considerations should be for the revised assessment?

It is evident that DAA has made savings in opex costs during the pandemic, albeit these have not been pro-rata to the reduction in traffic. It seems highly likely that some of these reductions will have addressed long-term structural issues, such as legacy staff costs. Hence, it would be expected that a new baseline should more closely reflect the efficient costs as identified by CEPA/Taylor Airey for the 2019 Determination. Indeed, the revised

Determination, following the 2020 Appeals Panel, set the glidepath to the achievement of these efficiencies as 2 years, i.e. that efficient opex was expected to be fully in place in 2022.

Setting the baseline for opex is, hence, more challenging due to the relatively high proportion of fixed or semi-fixed costs at airports and the difficulty of extrapolating from current levels of opex. In the circumstances, we consider that a 'bottom up' approach to setting efficient opex is probably the best approach, taking into account the extent to which operating costs are linked to demand recovery function by function. Assuming CAR has re-engaged advisers to examine this critical area, it will be vitally important that they assess the efficient level of opex and apply appropriate demand drivers in any assessment of future opex.

However, the uncertainties inherent in this approach is a further reason why a 'building blocks' based Determination is inappropriate at this time.

At para. 6.27 of the Issues Paper, CAR seems to suggest that it is minded to pass through to users excess Voluntary Severance Scheme (VSS) costs over the savings achieved. This would simply be rewarding past inefficiencies. Given that the VSS costs were incurred in order to achieve the long overdue savings in opex as identified in previous Determinations, it would be wholly inappropriate to pass these costs through to users and they should remain the responsibility of DAA.

Similar considerations of efficiency should apply to any environmental and sustainability related costs.

Commercial Revenues

Q. What has been the impact of COVID-19 on passenger behaviour, and are these changes likely to be temporary or permanent?

Q. Can the methodology previously used by the Commission to forecast Commercial Revenue be applied for this review, given the impact of COVID-19 on passenger behaviour?

Q. Should the Commission elect to change methodology, what changes should it make?

As with Opex, there remain uncertainties, which suggest that adopting a 'building blocks' approach could lead to a risk of an inappropriate Determination at this time. However, in general, there are there are indicators that DAA's commercial revenues should be higher than previously estimated.

In the first instance, CAR's elasticity driven approach to retail revenues failed to take into account the re-introduction of duty and tax free allowances for passengers travelling to the UK. As such passengers have historically accounted for over 30% of passengers using Dublin Airport, this represents a sizeable potential uplift in sales and revenues, regardless of any changes to retail behaviour.

It is likely also that post-pandemic, there will be greater use of private car to access the Airport (despite DAA's misguided plan to apply tolls for dropping off/picking up passengers) with the significant potential for increased car parking revenues. We would also expect to see allowance for new forms of charge and revenue streams arising from new initiatives, e.g. forecourt charging, solar farms etc.

Overall, we believe that the trends in commercial revenue potential will be upwards.

Q. We welcome views on the appropriate regulatory treatment of these [new] charges, or any others that respondents wish to draw our attention to?

In general, it would not be normal practice to load new charges into the regulated category as charges such as passenger set-down charges are not levied on all users and passengers have a choice. It may be deemed appropriate for some controls to be placed on such charges akin to the process for approving 'Access to Installations' for the purpose of ground handling. This would certainly seem the appropriate mechanism for de-icing charges as this is, in essence, a ground handling function.

However, such charges are controlled, it is important that they are fully accounted for in any regulatory Determination whether within commercial or aeronautical revenues.

Q. Should rolling schemes for commercial revenues be re-introduced?

We have always opposed the use of rolling schemes for commercial revenues. We do not consider such incentives necessary to encourage DAA to invest in revenue enhancing activities in later years of any quinquennium as there is still revenue to be earned from any operational improvements and any capex expended will remain in the RAB, so earning a return, over the appropriate period. As any shortfall in performance is passed back to users at the end of a regulatory period, it is perverse that any commercial upside is not treated consistently. This breaches the principle of symmetry as recommended by the Thessaloniki Forum in its 'Airport charges in times of crisis' February 2022 paper (para. 4.14).

Cost of Capital

Q. We welcome all input on the components of the WACC that may require updates, and detail on what approach should be taken in updating these components?

The key principle here must be that, to the extent that any risks are being transferred from DAA to users (which we do not accept), this must be reflected in a lower cost of capital. To the extent that the actions of CAR through the completed Interim Reviews have protected DAA, the WACC adopted in 2019 was already too high on the basis of the evident willingness of CAR to step in to protect DAA and the precedent that this sets.

Cost of Debt

We are concerned that CAR is focussed too much on short-term Covid-related implications and that, given that much of DAA's debt is long-term, a long-term view needs to be taken. This would be consistent with the view expressed by the Thessaloniki Forum in its February 2022 Paper on 'Airport charges in times of crisis' (para. 4.27) that the WACC should reflect long-term systematic risk not short-term parameters. Prima facie, then, the cost of debt should not vary significantly from the previous Determination and, indeed, there is evidence from DAA's new fundraising activity since the 2019 Determination that the cost of debt has fallen[2] due to the substitution of new bond finance for older debt, in particularly replacing short-term debt with long-term debt. This would need to be taken into account in any revised

[2] daa Annual Report 2020

calculation. DAA's attractiveness to lenders is not surprising given the assurance lenders receive from DAA's State shareholder.

Throughout the pandemic, DAA retains a highly favourable credit rating, as evidenced in the table below with selected major airport operators and airlines[3]. This does not suggest that DAA would have any difficulty in raising further debt given that its credit rating exceeds that of other airport groups and, significantly, of airlines including Ryanair.

Table 1: Comparative Credit Ratings

Entity Type	Name	S&P/ Fitch (or Equivalent)	Moody's	Grade	Date	Source
Airport	DAA	A-		Investment Grade	Sept. 2021	PowerPoint Presentation (daa.ie)
Airport	AENA	A-		Investment Grade	Oct. 2021	Rating | Aena
Airport	Heathrow	BBB+		Investment Grade	Feb. 2022	Credit ratings | Heathrow
Airport	Aeroports de Paris	BBB+		Investment Grade	Oct. 2021	Aeroports de Paris S.A. (ADP) Credit Ratings :: Fitch Ratings
Airport	Manchester Airports Group	BBB-		Investment Grade	Oct. 2021	Manchester Airport Group Funding PLC Credit Ratings :: Fitch Ratings
Airline	Ryanair	BBB		Investment Grade	Nov. 2021	Ryanair Holdings plc Credit Ratings :: Fitch Ratings
Airline	Wizz Air	BBB-		Investment Grade	Jan. 2022	Fitch Rates Wizz Air's New EUR500m Notes 'BBB-' (fitchratings.com)
Airline	IAG	BB	Ba2-	Sub-Investment Grade	Sept. 2021	IAG – International Airlines Group – Debt Home (iairgroup.com)
Airline	Lufthansa	BB-		Sub-Investment Grade	Nov. 2021	S_P_RatingsDirect_Lufthansa_AG_Outlook_revised_to_Stable_Nov-08-2021.pdf (lufthansagroup.com)
Airline	American Airlines	B-		Sub-Investment Grade	Mar. 2022	American Airlines, Inc. Credit Ratings :: Fitch Ratings
Airline	Delta	BB+		Sub-Investment Grade	Apr. 2021	Delta Air Lines Credit Ratings :: Fitch Ratings
Airline	United Airlines	BB+	Ba1	Sub-Investment Grade	Apr. 2021	United Airlines, Inc. -- Moody's assigns Ba1 ratings to United Airlines' new senior secured debt offerings (yahoo.com)

Nor is DAA's financial position in terms of indebtedness fundamentally different from other entities. An increase in debt represents a 'new normal' for most businesses following the pandemic. DAA is not out of line with other entities and does not need special protection through either a higher WACC or other financeability adjustments. Indeed, the increase in DAA's net debt to the end of 2021 (at 2.2 times) was less than the increase in debt of Ryanair (2.4 times) and Wizz Air (2.8 times), which are two of the financially strongest airlines. It is

[3] S&P/Fitch or Moody's ratings are stated as available.

clear that, going forward, higher levels of debt need to be assumed as normal compared to historic patterns.

Even the in terms of the increase in the level of overall financial debt of DAA (€824 million), this needs to be seen in the context that, relative to other entities, historic levels of borrowing have been low relative to the size of the Airport. We will develop this argument further in the paper setting out our position on CAR's Statutory Objectives in light of the changed circumstances caused by the COVID-19 pandemic, which we will submit to CAR shortly.

Cost of Equity

Beta

As with debt, we are concerned that CAR is focussed too much on short-term changes through the pandemic, and we do not consider that short-term changes are relevant to deciding the appropriate cost of equity going forward. We highlight, once again, the importance of taking a long-term view. The adoption of short-term parameters would compound the damage that would be done to users' interests from the parallel introduction of any risk sharing approach.

In any event, the strength of the two main airline users of Dublin Airport and the likelihood that their traffic will recover more quickly than elsewhere means that DAA should be exposed to lower levels of risk than potential comparators. This is evidenced by our own response to the offering of substantial discounts, i.e., the largest S22 schedule ever at Dublin airport.

Gearing

We do not agree with CAR's statement, at para 8.16, that there is no reason to revisit gearing assumptions. The statement made here is certainly incorrect, given the historically low cost of debt. If the aim was to estimate gearing that reflects a capital structure of an efficient airport to minimise its cost of capital, then the ideal capital structure should incorporate a greater proportion of debt financing. Subject to right proportions, this would shift the risk away from equity investors and increase reward. In the circumstances where DAA is reliant on debt because of the unwillingness of its shareholder to inject further equity but where the cost of debt is actually lower than the assumed cost of equity within the calculation of the WACC, it is penalising users if the WACC is set on the basis of an arbitrary assumption that gearing is 50:50. For example, the UK CAA has adjusted its gearing assumptions in relation to the regulation of Heathrow where there was evidence that it was consistent with its broader objectives. CAR should do the same.

Aiming Up Allowance

We continue to dispute the need for any 'aiming up allowance' in the cost of capital. There is no evidence that such an allowance is required so as to incentivise investment in new capacity or refurbishment. Given CAR's revised principal Statutory Objective in the Bill to protect and promote user interests, the justification for any adjustment is removed entirely as it favours investment over lowering prices to benefit consumers.

We do not necessarily agree with CAR's blanket assumption (para. 8.24) that *"the long-term effects of underinvestment are likely to have a greater overall impact on passengers"*. This

needs to be caveated by the extent to which such investment is supported by users, a core principle recommended by the Thessaloniki Forum (para. 4.26 of its February 2022 Paper). It is for users to decide what investments are needed. Although CAR cites, at para 8.28, that a majority of responses in 2019 supported DAA's proposed capital investment programme, it is no longer sufficient to count up the number of responses but these obviously need to be weighted by the proportion of passengers that they represent. We can see no reason to deviate from the principle, set out in CP2/2021, that support from users representing at least 50% of passengers using the Airport is required for capex investment to go ahead, other than in relation to demonstrable safety or compliance issues. We will discuss our comments on the prospective Capital Investment Programme further below but Ryanair, representing more than 40% of passengers using Dublin Airport, believes that the onus must be on ensuring that the Capital Investment Programme is affordable in the first instance without the need for any 'aiming up' adjustment. In other words, as with any other airport operating in a competitive environment, the level of capex expenditure should be gauged by reference to affordability without any upward adjustment to enable its funding, as noted by the Thessaloniki Forum at para. 4.24 of its February 2022 paper. To do otherwise is to encourage inefficient investment at the expense of users, which in turn increases the perceived risk putting upward pressure on the WACC.

Corporate Tax Rate

We are doubtful that DAA will reach the threshold for the new Corporate Tax Rate to apply within the proposed four-year regulatory period.

Overall, when viewed correctly over a longer time frame, we envisage very little need to change in the cost of capital when taking into account the impacts of COVID-19 on each component. The only substantive change should be the removal of the 'aiming up' allowance.

Capex

At the outset, we note that DAA has only spent €258 million out of €894 million of capital expenditure allowances in 2020 and 2021, yet they have been allowed to keep the return on and return of these allowances. This is unacceptable and would be further compounded to the extent that the remaining €636 million is carried forward to the 2023-2026 period as DAA seeks to do in its proposed approach in the recently published CIP 2020+ Review. If the return on and return of the unspent capital allowances is not returned to users, they would then face paying again towards these costs in future when they eventually enter the RAB.

Opening RAB

We support CAR's decision (para. 9.22) that unspent capital allowances for 2020-2022 will not enter the Opening RAB but this still leaves users making duplicate payments towards the cost of these projects in future when work commences.

CIP 2023-2026

Q. The key Capex question for this review is the nature, quantum and timing of allowances for further capital investment over the revised regulatory period. There are a number of elements to this:

- ***Dublin Airport led consultation on the revised CIP 2023-2026.***
- ***Determining efficient allowances for projects which are in the interests of airport users.***
- ***Regulatory treatment for future reconciliation.***
- ***Depreciation, time profiling, and pre-funding.***

Although CAR states that DAA was due to commence formal consultations on the CIP in February 2022, this consultation did not commence, severely handicapping the ability of users to comment meaningfully on the issues. We only received the Stakeholder Consultation report (CIP 2020+ Review) on 7th March 2021. Our comments are, thus based, on an initial high level review of the document. We reserve the right to provide further, more detailed comments to CAR once we have had the opportunity to examine DAA's CIP consultation document in detail.

CAR makes clear that the final investment plan should clearly demonstrate how users' views have been taken into account. At para. 2.3, CAR states that a high degree of consensus was achieved on the CIP and the proposed capacity enhancement projects in 2019 as an input to the original 2019 Determination. Applying CAR's principles in relation to StageGate projects/enhanced consultation requirements, this is not so, whilst a numerical majority of users may have supported projects, this is not the case if the volume thresholds for consensus were applied. We consider it highly relevant for CAR to adopt the same fundamental principle as adopted for 2021 and 2022, namely that projects costing more than €4 million, other than demonstrably related to safety or compliance, require the agreement of users representing more than 50% of the passenger volume using Dublin Airport. This is essential, at least for the forthcoming regulatory period if not beyond, in order to protect the interests of users during the recovery from the pandemic.

There should be no automatic entry of projects into the RAB or allowance for the return on and return of the costs of such projects until these conditions have been reached. To the extent that such conditions are met on a project by project basis within the initial consultation, these projects would form the core of the capex to be allowed for the period 2023-2026. All other projects would necessarily be excluded from the initial allowance but could be added – triggered – at a later date when support is attained.

As noted above, CAR should not take comfort from the previous support for the CIP (para. 9.9) as this was not weighted by the proportion of passengers represented by those carriers.

Chart 9.2 of the Issues Paper sets out the capex consultation requirements. It is important this is adhered to and the required information provided and adequately consulted on. It is notable that DAA considers that two days of presentations is sufficient to allow users to engage with a proposed €2.5 billion investment programme. The approach suggested by DAA is more akin to a general public consultation exercise regarding the general merits of a long-term proposal, and is wholly inadequate for users, who will pay the costs of the development. It is clear that the CIP document as received does not provide the business case information to allow users to assess the costs and benefits to them of each project nor the consideration of alternatives to meeting any need, as set out as the requirement by CAR. On this basis alone, the capital investment programme proposed by DAA must be rejected.

Furthermore, we concur with CAR (para. 9.8) that the timeframe over which 40 mppa capacity would be required will have slipped and is, hence, likely to be further away from the 2026 regulatory period end than originally envisaged. In these circumstances, the timeframe

for investments aimed at delivering 40 mppa capacity will have slipped beyond 2023-2026. We note that DAA indicates that 40 mppa will not be reached until 2030, meaning that there can be a substantive slowing of investment compared to that previously put forward. In contrast, DAA states, as para 4.3.9 of the CIP consultation, that it is actually seeking to bring forward investment in projects aimed at delivering 40 mppa. This is absurd.

At para. 9.13 of the Issues Paper, CAR makes clear that users should be protected from over provision of airport capacity, and the detrimental consequences for airport charges. It is evident that DAA has not adopted this approach and is proposing that the net cost of the CIP for the four years will increase by €600 million above the originally envisaged five-year programme due to the addition of new projects, including those related to sustainability and the environment, and adjusted project costs. Once account is taken of the projects that are anticipated to be completed by the end of 2022, the real increase in the cost of the programme is of the order of €1.2 billion in additional costs despite DAA's passenger forecast for 2026 being below the original forecast for 2024.

Bluntly, the original CIP approved by CAR for the 2019 Determination amounted to some €380 million a year over five years. The new programme proposed by DAA would mean expenditure of some €620 million a year for four years. This is neither credible, in terms of DAA's ability to deliver the programme, nor reasonable in terms of the ability of users to fund this scale of investment. There appears to have been no real attempt by DAA to reduce the burden that its capital investment programme places on users during the critical pandemic recovery period. It is simply assumed that it is acceptable to carry forward virtually all of the previously proposed projects and new projects have been added, such as refurbishment of the Old Terminal Building for which there is no obvious user benefit. This is wholly unacceptable.

To highlight the unreasonableness of DAA's approach, the proposed CIP still includes investment in the West Apron Underpass at a cost of €245 million despite DAA, at the end of the consultation document, making the case for the closure of Runway 16/34. This would negate the need for the Underpass at all and render the cost abortive. This cannot be efficient investment. Although DAA cites the unwillingness of IAA to allow vehicular crossings of a live runway, there will be no capacity need for Runway 16/34 once the North Runway is operational, with any need related to cross wind conditions relating to only 0.5% of annual aircraft movements, meaning that there would be no impediment to vehicular crossings save in exceptional circumstances as vehicular crossings of taxiways are commonplace. Indeed, DAA argues strongly that there are grounds to close the runway in any event due to the reduction in capacity on the North Runway when it is in use, which is its clear preference. In these circumstances, it simply makes no sense at all to retain an allowance for the West Apron Underpass within the CIP.

Along with the West Apron Underpass, CAR cites, at para 9.14, that it and Pier 5 made up 28% of the previous CIP. Whereas DAA had previously advised Ryanair (December 2021) that the timing of the need for Pier 5 had slipped beyond 2023-2026, the project has been reinstated within the CIP 2020+ Review with no obvious justification as to timing. If these projects were omitted, this would constitute a substantial saving on the capex required, even before any other efficiency savings are contemplated. There are doubtless other projects to which the same would apply.

Furthermore, DAA proposes to carry forward all existing allowances for Core Projects on the assumption that everything due to be spent by 2024 will now be spent by 2026, with no attempt at efficiency savings or deferrals to reflect the inevitable project slippage.

In summary, DAA's position is wholly unreasonable and appears to take no account of the importance of securing recovery before embarking on a large capital programme. DAA's cavalier approach to capex and user requirements flies in the face of the actions of other airports which are deferring investment and seeking more cost-effective ways of achieving the same ends in order to minimise the cost burden on users.

We will provide CAR with more detailed comments on the CIP proposals in the near future. In any event, we consider that users will need to have a much more central role in assessing whether projects are required at this time and that CAR's current review should go beyond simply whether the project costs are efficient to consider the extent to which they are required at all. The extent to which projects deliver against the requirements of current and future users' needs to be more transparently tested, taking into account the proportion of traffic that each user represents. It is not sufficient for CAR to simply assess whether a project would deliver enhanced capacity up to 40 mppa, as it did in 2019, but it must satisfy itself that the current capacity of the Airport is exceeded, and that the scale of the increment proposed is appropriate having regard to affordability and ensuring that current users are not unnecessarily pre-funding capacity. This would be consistent with the principles set out by the Thessaloniki Forum as discussed below.

Deliverables

Subject to the above, we accept the principles underlying identifying core deliverables and grouping of smaller project allowances to allow some flexibility but consider that larger projects (greater than €4 million) should be subject to enhanced consultation and StageGate processes per the last Interim Determination.

Depreciation Profiles, Time Profiling and Prefunding

We commend the views of the Thessaloniki Forum at para. 4.24 of its February 2020 paper, where it said that *"Solving a cash flow shortage for the sole reason of financing future investments or assets under construction through increasing charges however would not be possible if an airport were to operate in a competitive market. The prefinancing of investments in a competitive market is the responsibility of shareholders. Therefore, according to fundamental static regulatory principles, charges should not be increased to facilitate prefinancing of investments. In a competitive market, undertakings are able to recoup their efficient investments, without prefinancing. According to regulatory economic principles an airport should be allowed to recoup these investments when in use and where possible according to their actual use"* and that, in the current circumstances, *"Investments that are not necessary should be postponed."*

In the light of the above comments, the Thessaloniki Forum also commended (para 4.15) unitisation of depreciation, as CAR did in relation to the investment in T2, as one means of ensuring that current users do not pay unnecessarily for facilities that are built largely with future users in mind. Such an approach ensures that the burden of paying for facilities is according to their use rather than simply when they are provided, i.e. ensuring that facilities are paid for as they are used not as they are built. This is a preferable approach where a large capex programme aimed at delivering long-term capacity enhancement is proposed.

Other considerations

Construction price inflation

We are concerned that DAA has already applied an allowance for construction cost inflation to its project costs and projects this forward to the assumed mid-point in the delivery of each project. This means that costs are already inflated, particularly where CAR smooths the additions to the RAB over a regulatory period, with the consequence that there is a double counting of inflation whereby inflated costs are added to the RAB then an upward CPI adjustment made to the resulting price cap.

In any event, whilst there has been an escalation in construction costs during the pandemic, this may no longer be the case from 2023.

Capex triggers

As made clear in previous submissions, we do not support allowances being made for major capacity related projects in advance. We consider that such projects, typically subject to the StageGate process in any event, should only be included once the conditions to justify the investment and agreement from users has been attained, i.e., demand or outcome-based triggers. We do not accept that it is difficult to define appropriate triggers but these need to be related to the function of a facility, i.e., hourly movement thresholds for runway or taxiway related investment. Hence, any project triggers should be positive ones, as with the North Runway, rather than negative reprofiling triggers as applied by CAR in 2019. Given the uncertainty of the ability of DAA to deliver the scale of capital programme envisaged between 2020 and 2024, CAR's approach was unwarranted. If anything, such uncertainty is increased for the period 2023-2026.

We do not accept that positive triggers would incentivise premature investment as such investment would be subject to StageGate. In contrast, the current structure of triggers remunerates DAA prematurely with any downward adjustments being in arrears. This cannot be consistent with sound regulatory principles.

Environmental sustainability of capex projects

DAA has also included substantial new investment in projects aimed at environmental sustainability within its proposed CIP. These will need to be carefully scrutinised to ensure that they are justified and that the benefits to users are articulated. Some projects, such as the installation of solar power may be capable of generating net revenues and this would need to be accounted for. DAA's investments in sustainability projects may also qualify for State aid under the European Commission's recent Guidelines on State aid for climate, environmental protection and energy and this funding source must be considered before including these costs in the price cap. CAR should also bear in mind that airline users are themselves investing heavily in sustainability projects and should not be the funders of DAA's obligations in this regard, for example Ryanair has invested in the development of sustainable aviation fuels through Trinity College Dublin. [4]

[4] https://corporate.ryanair.com/news/ryanair-trinity-college-launch-saf-centre-ryanair-commits-to-12-5-saf-goal-by-2030-2/

Financing and Financial Viability

Q. While we intend to apply a similar methodology to 2019, the specifics of its application will need to take account of the other building blocks and the views of stakeholders. We seek views from stakeholders on the appropriate balance between enabling Financeability, while ensuring that users do not pay more than is necessary to reasonably enable Financeability?

At para. 10.13, CAR confirms that the financeability adjustment made in 2019 was specific to the scale of the capital investment programme envisaged. At the outset, then, it will be critical to ensure that, in the current circumstances of a fragile traffic recovery, the updated CIP is set at a level no greater than strictly required to meet the needs of users within the period to 2026 – the test must be set in terms of the proportion of Dublin Airport traffic that users represent, not just a numerical count of stakeholder views as CAR appears to have relied on in 2019. Longer-term investments should be deferred until the recovery of demand from the effects of the pandemic is clearer in the next Determination period with the CIP tailored according to affordability rather than prices adjusted to enable a large and premature programme, as proposed by DAA, to be financed.

At para. 10.5, CAR implies that the upcoming changes to its Statutory Objectives do not require it to reconsider its financeability considerations. We do not agree for the reasons we explain below.

As noted above and in Chart 10.1 of the Issues Paper, it is clear that DAA has retained an investment grade rating through the pandemic. This is because of its State ownership (and the relationship of its rating to the sovereign rating), and monopoly position in the Irish market, enhanced by a perceived benign and favourable regulatory environment.

In practice, DAA has had no difficulty raising debt through the pandemic. DAA, like many airport operators, have raised a significant amount of debt funding to alleviate short-term financial obligations, improve the overall liquidity position to prepare for further shocks and to remain financially viable. According to DAA's 2020 Annual Report, the group have made the following additions[5]:

- DAA has increased their undrawn revolving credit facility from €300m in 2019 to €450m in 2020 and extended this facility tenor to March 2026;
- DAA has also subsequently received a €350m 20yr loan from the European Investment Bank; and
- DAA has gone to the capital markets to raise a further €500m in bonds due by 2032 and this was reported to be three times over-subscribed[6].

In 2021, DAA also sought to raise a further €150m as an add on to its existing bond of €400m June 2028 bond[7].

The effect of these transactions has significantly improved DAA's cash and short-term liquidity position and extended the timeframe over which existing debt has to be repaid. We estimate that the proportion of outstanding debt due within the next five years has dropped

[5] Pg 28, daa Annual Report 2020
[6] https://www.irishtimes.com/business/transport-and-tourism/airports-group-daa-borrows-500m-as-passenger-numbers-plunge-1.4395580
[7] Pg 18, daa debt investor presentation, September 2021

from 24% in 2019 to 12%[8] in 2020. As a result of long-term financing, DAA has now extended their average maturity with the next big debt repayment due in 2028. This analysis suggests that DAA has no difficulty in raising debt finance and that, provided that the investment programme is 'right sized', there is no need for any financeability adjustment going forward. Certainly, bringing forward of depreciation would appear to run counter to the principle of spreading costs over those who will actually use the facilities as established in the Thessaloniki Forum paper of February 2022 (para. 4.15) and we consider that the appropriate response to any financing difficulty should be to slow the capital programme, particularly as any difficulty is likely to relate to the evident slow-down in traffic growth and a revenue shortfall through the pandemic, which would render capex investment premature in any event.

In considering the issues at para. 10.19, CAR discusses the expectations of investors as one justification for a financeability adjustment. However, as the investor is the Irish State, whose returns are realised through the connectivity provided by the airlines using Dublin Airport and the wider economic benefits rather than direct financial dividends, this is simply not a relevant consideration. If the equity holder is unwilling to invest in future capacity, as is manifestly the case, then the only relevant consideration is the ability to raise debt, which for the reasons outlined above, not least the nature of the equity holder which appears to be seen as a positive benefit in terms of raising debt, is not an issue given DAA's strong credit rating.

Recent experience would suggest that CAR's focus on financial ratios may be misplaced and that the focus should be on the practical evidence of DAA's ability to re-finance and raise debt. We consider that, with an appropriately scaled CIP that takes into account the current financial position of DAA and the ability of users to pay, there would be no requirement for any adjustments.

Quality of Service

Q. We welcome opinions on the extent to which the scheme outlined in the 2019 Determination remains fit for purpose, and what changes may be appropriate given the impact of COVID-19?

Q. We invite feedback from stakeholders on any adjustments that should be made to the 2019 scheme. This includes comments on the set of metrics, the nature of incentives, the measurement of performance, and the targets?

We agree with CAR's view that a broader Quality of Service (QoS) scheme should be reinstated at Dublin airport from 2023, and that the scheme outlined in the 2019 Determination represents a good starting point. We accept that there may need to be some adjustments to reflect changes in processes or passengers' expectations whilst the pandemic is ongoing but there is strong evidence that there has been a very poor performance at critical processes, such as security, for which compensation to users has been nil or, at best, severely reduced in 2022.

We reject any suggestion of bonuses being applied for out-performance. If the QoS scheme is properly specified in the first place to reflect the service standards actually required by users, DAA should not be rewarded for outperforming these standards as then it would be delivering a level of service that is not actually required and users should not be expected to

[8] Pg 27, daa Annual Report 2020

pay for this outperformance. The penalties should be set at an appropriate level to act as sufficient incentive for delivering the required level of service.

This would be akin to rewarding an airport for over-design, according to the principles contained within the IATA Level of Service concept for airport development, which addresses processing and waiting times as well as space standards. This is referred to in the Helios Report for CAR in 2019[9]. IATA makes clear in its Airport Development Reference Manual that over-design or over-provision in terms of service delivery are not something that users should be expected to pay for and this principle holds for Dublin Airport.

Please do not hesitate to contact us to further discuss the contents of this letter.

Yours sincerely,

Eoin Kealy
Head of Competition & Regulatory

CC: Ray Kelliher, Director of Route Development, Ryanair.
Regan Tilson, Airport Economics Manager, Ryanair.
Adam Kehoe, Airport Economics Analyst, Ryanair.

[9] https://www.aviationreg.ie/_fileupload/2019%20Determination/Final%20Determination/2020-2024%20Final%20CIP%20Terminal%20Modelling.pdf